

TIMING IS EVERYTHING WITH DELINQUENT TAXES

Below is a quick summary of the options for a property owner, mortgage company or other interested party in dealing with delinquent real estate taxes. If you have any questions, please do not hesitate to contact us.

A. Pay the Delinquent Taxes

Pay the delinquent taxes upon receipt of the delinquency notice.

B. Redeem the Delinquent Taxes

Redeem the delinquent taxes as soon as possible after the tax sale. In reality, many taxpayers may not discover the delinquency until the tax buyer has filed a petition for tax deed and sent take notices to interested parties.

C. Redeem the Delinquent Taxes Under Protest

If a tax deed petition has been filed, an interested party may redeem delinquent taxes under protest. The redeeming party must be aware that if the defense is not sustained, the court “shall order the party redeeming to pay the petitioner reasonable expenses, actually incurred, including the cost of withheld redemption money, together with a reasonable attorneys fee.”

D. If Grounds Exist, Seek a Sale in Error

If a taxpayer is aware of certain grounds for a sale in error, the taxpayer can request that the Treasurer seek a sale in error on behalf of the county.

E. Object to the Petition for Tax Deed

Prior to entry of the order directing issuance of the tax deed, an interested party may file objections in the tax deed proceeding. Unless there is a specific strategy for doing otherwise, file objections before the prove-up hearing or as soon as possible after the prove-up.

F. Move to Vacate the Order for Tax Deed Within 30 Days

Any issue that could have been raised at the prove-up hearing may be presented in a Section 2-1203 motion filed within 30 days after entry of the order.

G. Petition to Vacate the Order for Tax Deed After 30 Days

A far stricter standard applies to a petition for relief from a tax deed order under Section 2-1401 of the Code of Civil Procedure filed more than 30 days after entry of the tax deed order. Moreover, filing a petition to vacate does not stay enforcement of

the order for tax deed, i.e., the tax buyer may obtain possession of the property while the litigation is pending. The petitioner will have to negotiate with the tax buyer regarding possession of the property, frequently through the payment of monthly “use and occupancy.” The petitioner’s counsel must have a thorough understanding of the Property Tax Code and must act quickly to determine potential grounds to vacate the order directing issuance of the tax deed to avoid arguments about lack of diligence and the effects of bona fide interests. Petitioner’s counsel must also be cognizant of standing issues for the petitioner.

H. Petition to Vacate the Order for Deed After Two Years

Some grounds can be raised at almost any time such as the taxes being paid in full prior to the sale; the property was exempt; the property was owned by the State, a municipality, or there was in interest of the United States; the owner filed bankruptcy prior to the tax sale; other lack of jurisdiction of the court. Due Process and application of Federal and Illinois constitutional guaranties may permit attack on tax deed at any time.

I. The Indemnity Fund as a Remedy of Last Resort

Although the Indemnity Fund is an invaluable remedy for many parties who have lost title to their property through the tax sale process, it should be viewed as a last resort. The indemnity petitioner may have to negotiate an agreement with a mortgagee in order to make the Indemnity Fund a viable economic option. They may also be able to enter into an agreement with the tax buyer (commonly known as a repurchase or “flip” agreement) to continue to occupy the property and possibly reacquire the property using the proceeds of an indemnity fund judgment.